

Nontidal Wetland and Stream Mitigation Bank/In-Lieu Fee Credit Release Schedule for Maryland

January 4, 2022

Milestone	Interagency Review Team (IRT) Standard Release Example		IRT Accelerated Release Example ("Managed-Risk" Projects)	
	Credit Received	Cumulative	Credit Received	Cumulative
Initial Credit Release ¹	15%	15%	20%	20%
Construction Credit Release	Up to 15%	30%	Up to 20%	40%
1 st Monitoring Report (Yr 2)	Up to 20%	50%	Up to 20%	60%
2 nd Monitoring Report (Yr 3) ²	Up to 10%	60%	Monitoring report submittal required with no associated credit release	
3 rd Monitoring Report (Yr 5) ³	Up to 10%	70%	Up to 20%	80%
4 th Monitoring Report (Yr 7)	Up to 10%	80%	Monitoring report submittal required with no associated credit release	
5 th Monitoring Report (Yr 10)	20%	100%	20%	100%

Table 1. Credit release for nontidal wetland, stream and fish barrier removal⁴ projects.

A credit release schedule is a risk management tool to ensure achievement of mitigation bank objectives and is tied to performance-based milestones. A credit release schedule with a greater number of interim credit releases will be required when the IRT does not have a high degree of confidence in successful performance of a mitigation bank site based on a variety of factors and when the sponsor wants financial assurances released back as performance-based milestones are achieved. The document, "Credit Release Schedule General Considerations and Regulatory Guidance Letter 19-01", dated December 2, 2020 identifies factors considered by the IRT when determining the appropriate credit release schedule. Mitigation banking instruments proposing credit release schedules aligned with "managed risk" or RGL 19-01 must address/discuss these factors on a project-specific basis for the IRT's evaluation and consideration in determining the appropriate credit release schedule. In all cases, a significant share of the

¹ 100% release of preservation credit

² For mitigation projects proposing use of the Managed-Risk Proposals credit release schedule, monitoring reports will still be required in Year 3.

³ Starting at the end of Year 5 (the 3rd monitoring report), if the mitigation bank site meets the final year monitoring performance standards for two consecutive monitoring events and has met all performance-based milestones every monitoring year, the bank sponsor may request reduction or waiver of remaining monitoring requirements. In addition, remediation must not have occurred during the last two years before requesting a reduction or waiver of required monitoring requirements to ensure that the compensatory mitigation project is truly meeting its performance standards and progressing towards ecological sustainability.

⁴ Fish barrier removal projects may have an alternate credit release schedule determined on a case-by-case basis.

projected total credits is only available for release after full achievement of ecological performance standards.

“Managed-risk” mitigation projects have a high likelihood of success and reasonably foreseeable outcomes. Site selection and design appropriate to the chosen site (including soil management) must be acceptable to the Interagency Review Team (IRT). The applicant must adjust the design to meet IRT concerns and requests. The applicant must have successful experience with that type of work, even if in another state. For a stream design to be considered a managed-risk project, it should include a 2D hydraulic model verifying stability for flows up to the 100-year for both channel and floodplain. This model should be run or verified by a third-party engineer (not the bank sponsor or stream restoration designer). Stream projects should be located based on ecological considerations including but not limited to: watersheds with low impervious surface (<10%) and having no or little planned development. Target species and the strategy for creating associated habitat should be identified and detailed in the mitigation plan. Surrounding land use (e.g., agriculture) or invasive species are also considered in determining whether an alternative credit release schedule is appropriate. Examples of managed-risk stream and wetland mitigation may include removing fills and structures to daylight streams or filling/plugging ditches or removal of existing drainage tile to restore wetland hydrology, respectively.

The “IRT Alternate Example” represents the maximum credit release currently being considered by the IRT. The Corps and MDE have discretion, after consulting with the IRT, to determine the appropriate credit release schedule for a particular bank or in-lieu fee site. The Corps and MDE, in consultation with the IRT, will consider the aspects of the mitigation bank or ILF site on a case-by-case basis when determining the appropriate credit release schedule. The site must be considered lower risk by the IRT. Other factors may be considered when determining credit release (e.g., encroachment concerns, etc.).

Sponsors may also request credit release schedules consistent with the Corps’ Regulatory Guidance Letter (RGL) #19-01. To be considered under this optional RGL 19-01 credit release schedule, the sponsor must agree to keep full replacement financial assurances in place until the bank has achieved ecological performance standards necessary for final credit release. The sponsor must address/discuss site-specific criteria and requirements outlined in the “Credit Release Schedule Considerations and Regulatory Guidance Letter 19-01” document. In general, the IRT would need to determine that the site had an exceptionally high chance of success (a “slam-dunk”) and the sponsor would need to have extensive experience and demonstrated success in this specific type of work.